

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

BECKLEY DIVISION

ROBERT K. ELLIS,

Petitioner,

v.

CIVIL ACTION NO. 5:10-cv-00931

D. BERKEBILE,

Respondent.

MEMORANDUM OPINION AND ORDER

On August 3, 2010, the Court held a show cause hearing in the above-captioned matter. This Court is charged with screening filings in habeas petitions to determine whether they may be dismissed for failure to state a claim upon which relief can be granted. 28 U.S.C. §1915A(b)(1). After careful consideration of Petitioner's Petition and the evidence and arguments presented at the hearing, the Court finds that Petitioner has failed to exhaust his administrative remedies and, therefore, is not entitled to the relief requested.


In his Petition for Writ of Habeas Corpus Under 28 U.S.C. Section 2241 [Docket 1], Petitioner alleges urgent dental needs and seeks immediate relief. However, federal law requires that Petitioner exhaust administrative remedies before filing suit. Prison Litigation Reform Act of 1995 ("PLRA"), 42 U.S.C. § 1997e, Pub. L. No. 104-134, § 803, 110 Stat. 1321, 1371-72. The fact that Petitioner failed to exhaust administrative remedies as required by the PLRA was uncontested at the August 3, 2010, hearing, and this failure is fatal to his claim. Therefore, the Court **ORDERS** that Petitioner's Petition for Writ of Habeas Corpus Under 28 U.S.C. Section 2241 [Docket 1] be

DENIED and that this case be **DISMISSED WITHOUT PREJUDICE** and **STRICKEN** from the docket of this Court. The Court further **ORDERS** that, given the aforementioned findings, Respondent's Motion to Dismiss (Docket 10) is hereby **DENIED AS MOOT**.

The Court has additionally considered whether to grant a certificate of appealability. *See* 28 U.S.C. § 2253(c). A certificate will not be granted unless there is "a substantial showing of the denial of a constitutional right." *Id.* § 2253(c)(2). The standard is satisfied only upon a showing that reasonable jurists would find that any assessment of the constitutional claims by this Court is debatable or wrong and that any dispositive procedural ruling is likewise debatable. *Miller-El v. Cockrell*, 537 U.S. 322, 336-38 (2003); *Slack v. McDaniel*, 529 U.S. 473, 484 (2000); *Rose v. Lee*, 252 F.3d 676, 683-84 (4th Cir. 2001). The Court concludes that the governing standard is not satisfied in this instance. Accordingly, the Court **DENIES** a certificate of appealability.

The Court **DIRECTS** the Clerk to send a copy of this Order to counsel of record and to any unrepresented party.

ENTER: August 6, 2010



IRENE C. BERGER, JUDGE
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA